IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5135 OF 2003

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders.

Shri S.D.Patil holding for Shri P.J.Pawar for the Petitioner.

CORAM : ABHAY S.OKA, J.

DATED : 16th Oct., 2004.

P.C.:

1. Heard the learned Counsel for the Petitioner. The challenge in this petition is to the order dated 17th January 2003 by which the learned trial Judge permitted the Respondents/Defendants to file written statement.

2. The learned Counsel appearing for the Petitioner submitted that the application made by the Respondent was not in proper form. He relied upon a Judgment of the learned Single Judge of this Court reported in 2003(3) Nah.L.J. page 238 (Ballumal A.Jaisingh v/s. M/s.J.J.Builders & ors.) and submitted that the Respondent ought to have made application for condonation of delay in filing the application. The learned Counsel further submitted that the suit summons was served on the

Respondent on 19th July 2001, and on 28th November 2002 the Petitioner/Plaintiff has filed claim affidavit and has also produced on record of the suit the original documents. He, therefore, submitted that the application filed on 21st December 2002 suffers from gross delay.

3. I have considered the submissions. The Application made by the Respondent is for setting aside the order passed by the trial Court directing that the suit shall proceed without Written Statement. Considering the averments made in the application, there is no merit in the first submission of the learned Counsel that the application is not in proper form.

4. For filing such application no prayer was required to be made under section 5 of the Limitation Act 1963 as Limitation Act does not prescribe any period for filing such application. Therefore, there is no merit in the second submission of the learned Counsel for the Petitioner.

5. It is true that there is a delay in filing the Written Statement on the part of the Respondent. The Respondent is a public body being a Corporation established under the Bombay Provincial Municipal Corporation Act, 1949. The reasons are assigned in

the application for not filing the Written Statement at earlier stage.

6. By the impugned the Respondent-Corporation has been permitted to file the Written Statement for defending the suit on merits. There is no failure of justice calling for interference in a Petition under Article 227 of the Constitution of India. Petition is therefore rejected with no order as to costs.

Judge.